IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 113 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SHREYAS NIDHI, SWASTI NIDHI, VENU NIDHI & SWASTHYA NIDHI,

Appearance:

1. INCOME TAX REFERENCE No. 113 of 1990
MR MANISH R BHATT for Petitioner No. 1
NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, following question of law is referred to this Court for its opinion::-

"Whether, on the facts and in the circumstances of the case, the provisions of section 13(2)(h) and 13(3) applied and whether the assessee trust was entitled to exemption u/s. 11 of the Income-tax Act, 1961 ?"

2. The assessee has claimed exemption under Section 11 of the Act. The Income-tax Officer, however, denied such exemption to the assessee on the ground that provisions of section13(2)(h) were applicable to it. Further, the Income-tax Officer took an adverse inference against the assessee as he was of the view that the assessee had not filed audit report as contemplated under Section 12A(b) of the Act, within the prescribed time. In appeal, the Appellate Assistant Commissioner held that the provisions of Section 13(2)(h) were not applicable in the assessee's case. He further held that the default if at all in filing the audit report was "technical lapse". He, therefore, held that the Income-tax officer was not justified in denying the benefit of exemption under section 11 of the Act.

3. Being aggrieved by the order of the Appellate Assistant Commissioner, the revenue came up in appeal before the Tribunal. At the time of hearing of the said appeal, the learned counsel for the assessee placed before the Tribunal a copy of its order in the case of Ambalal Sarabhai Trust No. 19 (ITR No. 595/Ahd/80 dated 28.1.1981) and highlighted the fact that on an identical point which came up before the Tribunal in that case, the Tribunal was pleased to hold that the provisions of Section 13(2)(h) of the Act were not applicable and, therefore, the assessee was entitled to exemption under Section 11 of the Act. He, therefore, urged that the Tribunal should likewise hold in the said appeal also.

4. While disposing of the appeal by the Tribunal, a reference was made to the Tribunal's own decision in the case of Ambalal Sarabhai Trust No. 19 (ITA No. 595/Ahd/80 dated 28.1.1981) and the Tribunal has taken the view that the provisions of Section 13(2)(h) of the Act were not applicable and the assessee was, therefore, entitled to exemption under Section 11 of the Act. The said issue was taken by the revenue in reference before this Court and while deciding the said reference this Court has referred to and relied on its earlier decision in the case of Commissioner of Income-tax vs. Insaniyat Trust, (1988) 173 ITR 248, wherein, after elaborately discussing the provisions contained in Section 11 and 13 of the Income-tax Act, 1961, this Court had come to the conclusion that the provisions of Section 13(2)(h) are

not applicable and the assessee was entitled to the exemption under Section 11 of the Act. The facts of the present case are similar to the facts of the Insaniyat Trust and other similar matters. We follow the decision taken by this Court in the above judgments. Accordingly, we answer the question referred to us partly in the negative and partly in the affirmative. However, it is in favour of the assessee and against the revenue.

The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-